

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re: : 11-43785 (CEC)  
: :  
NEW YORK SPOT, INC., : 271 Cadman Plaza East  
: : Brooklyn, New York  
Debtor. :  
-----X September 14, 2011  
: :  
In re: :  
: :  
NEW YORK DOUBLE, INC., : 11-44051 (CEC)  
: :  
Debtor. :  
-----X  
: :  
In re: :  
: :  
MARTENSE NEW YORK, INC., : 09-48910 (CEC)  
: :  
Debtor. :  
-----X  
: :  
In re: :  
: :  
SHAKER GARDENS, INC., : 11-45116 (CEC)  
: :  
Debtor. :  
-----X

TRANSCRIPT OF (17) SCHEDULING ORDER FOR  
HEARING ON DISCLOSURE STATEMENT; (12) ORDER FOR DEBTOR TO  
FILE PROPOSED PLAN, DISCLOSURE STATEMENT, AND MOTION SEEKING  
APPROVAL FOR DISCLOSURE STATEMENT; (5) ORDER SCHEDULING STATUS  
CONFERENCE FOR APPROPRIATE SCHEDULE; (15) STIPULATION THAT  
DEBTOR SHALL FILE A CHAPTER 11 PLAN, DISCLOSURE STATEMENT  
AND MOTION TO APPROVE DISCLOSURE STATEMENT; (21) NOTICE OF  
HEARING ON DISCLOSURE STATEMENT; (10) MOTION TO APPOINT  
TRUSTEE OR EXCUSE THE RECEIVERS COMPLIANCE WITH  
11 USC SECTION 543  
BEFORE THE HONORABLE CARLA E. CRAIG  
UNITED STATES CHIEF BANKRUPTCY JUDGE

APPEARANCES:

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For New York Spot: TED DONOVAN, ESQ.  
Goldberg, Weprin, Finkel,  
Goldstein, LLP  
1501 Broadway  
New York, New York 10036

For West 22nd, LLC: MARK A FRANKEL, ESQ.  
Backenroth, Frankel & Krinsky, LLP  
489 Fifth Avenue, 28th Floor  
New York, NY 10017

For Carver Federal  
Savings Bank: FRANK DELL'AMORE, ESQ.  
Jaspan Schlesinger, LLP  
300 Garden City Plaza  
Garden City, NY 11530

For the US Trustee: WILLIAM CURTIN, ESQ.  
United States Department of Justice  
271 Cadman Plaza East, Suite 4529  
Brooklyn, NY 11201

For Martense NY, Inc: NEAL M. ROSENBLoom, ESQ.  
Goldberg, Weprin, Finkel,  
Goldstein, LLP  
1501 Broadway  
New York, NY 10036

For Prospective Buyer: BURTON WESTON, ESQ.  
Garfunkel Wild, PC  
111 Great Neck Road  
Great Neck, NY 11021

Court Transcriber: MARY GRECO  
TypeWrite Word Processing Service  
211 N. Milton Road  
Saratoga Springs, New York 12866

1                   THE COURT: I'm getting ready to call all of the  
2 Nelkenbaum related cases, so you can all come up here for that  
3 and we'll take them I guess in the order that they appear on  
4 the calendar.

5                   THE CLERK: This is New York Spot first. Yeah, New  
6 York Spot, number 19 and 20. Can we have appearances first,  
7 please?

8                   MR. DONOVAN: Ted Donovan; Goldberg, Weprin, Finkel,  
9 Goldstein for the debtor. Mr. Nelkenbaum is here as the  
10 principal of the debtor.

11                  MR. FRANKEL: Mark Frankel; Backenroth, Frankel and  
12 Krinsky, attorneys for West 22nd, LLC in the New York Spot  
13 Case.

14                  MR. LANDSMAN: Andrew Landsman, member of West 22nd,  
15 LLC.

16                  MR. DELL'AMORE: Frank Dell'Amore, counsel for Carver  
17 Federal Savings Bank in the Shaker Gardens case.

18                  MR. CURTIN: William Curtin for the United States  
19 Trustee, Your Honor, appearing in all four cases.

20                  MR. ROSENBLoom: Neal Rosenbloom; Goldberg, Weprin,  
21 Finkel, Goldstein, appearing in the Martense case.

22                  MR. WESTON: Burton Weston; Garfunkel Wild, PC on  
23 behalf of the prospective purchaser in the Martense case.

24                  THE COURT: The prospective purchaser of the  
25 property?

1 MR. WESTON: Yes.

2 THE COURT: Is there anyone here for the lender in  
3 Martense?

4 MR. ROSENBLoom: No, Your Honor, but I have spoken  
5 with the lender. Since -- should we wait until Your Honor  
6 calls the case?

7 THE COURT: Yes. That's fine. Let's start with New  
8 York Spot.

9 MR. DONOVAN: Your Honor, in accordance with your  
10 order we have filed a plan and disclosure statement which --  
11 and it's essentially I can do New York Spot and Shaker Gardens  
12 relatively the same way. We have a deal with the lender in New  
13 York Spot. We have vacated the stay. The receiver is still  
14 in. They are proceeding in State Court. Meantime, the plan  
15 provides essentially for us to try to market and sell the  
16 property here in Bankruptcy Court while they're proceeding in  
17 State Court on the theory that we'll be able to get this done  
18 much more quickly than they will and then they would have the  
19 right to credit bid their lien and we will pay those same  
20 priority creditors that they would have to pay in any event in  
21 a foreclosure sale because it's basically taxes that come ahead  
22 of them.

23 THE COURT: In New York Spot have you changed your  
24 deal? Have you had some conversation with Mr. Frankel?

25 MR. FRANKEL: I think Mr. Donovan misspoke when he

1 said the plan. That's the deal. The plan has to be amended to  
2 reflect the deal.

3 THE COURT: So you've settled your objections?

4 MR. FRANKEL: In the hallway today we did, Your  
5 Honor.

6 THE COURT: Okay.

7 MR. DONOVAN: Your Honor, that was what we had  
8 intended. It's not how it came out when we finished the  
9 papers.

10 THE COURT: Okay. So let me understand this. You  
11 have a property that is probably undersecured; correct?

12 MR. DONOVAN: Yes.

13 THE COURT: And so what you're going to do is sell it  
14 in a 363 sale?

15 MR. DONOVAN: Yes. And they will have the right to  
16 credit bid and --

17 THE COURT: And you're not restricting the right to  
18 credit bid to any particular amount?

19 MR. DONOVAN: Well, Your Honor, what we talked about  
20 is first of all reserving our right to challenge the amount of  
21 their claim. Secondly, we will allow them to credit bid up to  
22 the amount of their claim but what we're going to do is because  
23 the property is probably unsecured we don't want to have a  
24 credit bid number that starts so high nobody else would come in  
25 and bid, so we're going to work out essentially a first minimum

1 bid but they would have the right to bid higher than that if  
2 anybody else comes in and bids more. So an opening bid, just  
3 for an example, would be \$1.7 and they would have the right to  
4 bid up to the full amount of the claim of \$2 million.

5 THE COURT: Okay. So you're not restricting their  
6 right.

7 MR. DONOVAN: We're not restricting them. And the  
8 plan as it was originally written did restrict it. That's the  
9 major concession that we're making there. In the meantime,  
10 they have the right to continue with their foreclosure. The US  
11 Trustee has made a motion --

12 THE COURT: What is the purpose of this?

13 MR. DONOVAN: The purpose of this, Your Honor, is  
14 because we think that we can sell the property for a -- we have  
15 a better chance of marketing and selling the property here in  
16 Bankruptcy Court than we ever do in a foreclosure where  
17 typically nobody comes and essentially the debtor has no role.  
18 And so we think the best chance we have to try to sell and get  
19 more than the lien is to go ahead with this. And because we're  
20 already this far into the case procedurally, it's not that much  
21 more to do it.

22 THE COURT: How much undersecured is the lender? I  
23 guess since you don't have a valuation of the property and you  
24 also don't have an agreement on the amount of the claim I guess  
25 that's a hard question.

1                   MR. DONOVAN: Those are questions I can't answer,  
2 Your Honor. I believe in this instance it's fairly close.  
3 What we think the value is is fairly close to what their claim  
4 is. Actually, I think it's probably the case in both this and  
5 Shaker. But we think that this is the best chance that we have  
6 to try to salvage something here in terms of maximizing the  
7 return on the property.

8                   THE COURT: Who comes -- and there is a second  
9 mortgage on this property; isn't there?

10                  MR. CURTIN: Yes, Your Honor.

11                  MR. DONOVAN: There is a second mortgage. The second  
12 mortgage again is a -- this is a friendly party who loaned  
13 money to Mr. Nelkenbaum's various different entities and took  
14 liens against all those different entities and he's willing to  
15 work with us whatever we need to do. If there's money for him,  
16 great. If there isn't money for him, he's not going to stand  
17 in our way.

18                  THE COURT: Are there unsecured claims?

19                  MR. DONOVAN: Very small.

20                  THE COURT: Tax claims?

21                  MR. DONOVAN: Yeah, there are tax claims that we have  
22 to deal with. And one of the things that the US Trustee has  
23 asked for that we are working on and we'll have by the end of  
24 this month are tax returns for all of Mr. Nelkenbaum's  
25 entities.

1                   THE COURT: Tax claims that, any tax claims that are  
2 secured?

3                   MR. DONOVAN: One moment, Your Honor.

4                   THE COURT: I assume that you're going to dismiss  
5 this case once you've sold the property then, since there won't  
6 be anything to distribute.

7                   MR. DONOVAN: Well, the idea, Your Honor, would be to  
8 confirm a plan and distribute the money as we have it to  
9 distribute.

10                  THE COURT: The likely outcome is that either it's  
11 going to be bought by the secured creditor or they're going to  
12 -- all the distributions are going to go to them; correct? So  
13 what's the purpose of doing this plan? You think you can avoid  
14 the property and transfer taxes that way?

15                  MR. DONOVAN: It would -- any plan --

16                  THE COURT: And who's going to be your peer class  
17 voting for the plan? I guess it depends on if the secured  
18 creditor is paid in full.

19                  MR. DONOVAN: Well, the idea is that the -- since we  
20 have this second mortgage that is --

21                  THE COURT: I guess he would be --

22                  MR. DONOVAN: -- effectively going to get  
23 [unintelligible] that they would be unsecured and they would  
24 vote in favor of the plan. And Your Honor, there are some  
25 secured claims that are filed in this case, tax claims, but

1 they are estimated claims based on there not being filed  
2 returns. When the returns are filed, we will --

3 THE COURT: But those are, excuse me, those are  
4 secured claims?

5 MR. DONOVAN: I believe some of them are, Your Honor.  
6 The priority claims, I believe at least one of them was filed  
7 as a secured claim. But in any event, we'll sort all of those  
8 things out in the next few weeks when we get the tax returns.

9 THE COURT: But they could -- I guess a secured  
10 creditor could try to block you from selling the property if  
11 you're not going to get enough to pay them in full and they  
12 would come after the lienholder; correct? If these are income  
13 tax claims; right? These are not property tax claims?

14 MR. DONOVAN: That's right. They are property tax  
15 claims as well. Sullivan County I believe filed a proof of  
16 claim appearance. I'm sorry, [inaudible] County filed a claim  
17 here.

18 THE COURT: Does this relate somehow to a personal  
19 guarantee?

20 MR. DONOVAN: There are personal guarantees, Your  
21 Honor, on all of Mr. Nelkenbaum's properties.

22 THE COURT: You're not --

23 MR. DONOVAN: At the moment they have not agreed to  
24 any release of the guarantee if we don't get enough to pay it  
25 off although we're still trying to talk them into that.

1                   THE COURT: Which creditors hold the personal  
2 guarantees?

3                   MR. DELL'AMORE: Carver has a personal --

4                   MR. DONOVAN: Carver does and Shaker and the second  
5 lienholder does.

6                   THE COURT: Okay.

7                   MR. DONOVAN: But not the first in New York Spot.

8                   THE COURT: The plan's not going to purport to --

9                   MR. DONOVAN: To grant the -- no.

10                  THE COURT: Releases of personal guarantees?

11                  MR. DONOVAN: No.

12                  THE COURT: Okay.

13                  MR. DONOVAN: Not unless though they agree to it.

14                  THE COURT: I'm still sort of scratching my head  
15 about why you're doing this.

16                  MR. DONOVAN: As I said, Your Honor, we're trying to  
17 maximize the return if we can. We just feel we can do a better  
18 job of trying to get competing bids than could happen in a  
19 foreclosure sale.

20                  THE COURT: All right. And nobody has a problem with  
21 this at this point?

22                  MR. CURTIN: Well, Your Honor, William Curtin for the  
23 United States Trustee. I'm not comfortable saying I don't have  
24 a problem with it. I mean I'm hearing about it for the first  
25 time so at the very least I think the hearing needs to be

1 adjourned, the papers need to be amended and we'll look at it  
2 and see what they propose because I share Your Honor's  
3 sentiment that what's the point? As Mr. Donovan mentioned, we  
4 did file a motion to dismiss the case that's returnable in  
5 early October. And there are two points I'd like to make that  
6 I think are relevant to the inquiry here. One has already been  
7 discussed, that is that there's no tax returns so we have no  
8 idea what the tax claims are, and two, that there's no bar  
9 date. So we really have no idea what any of the claims are.

10 So --

11 THE COURT: You need a bar date.

12 MR. DONOVAN: Yes, Your Honor.

13 THE COURT: Are there bar dates in any of these  
14 cases?

15 MR. CURTIN: Only in Martense.

16 MR. DONOVAN: Martense. Your Honor, the trustee's  
17 motion to dismiss is returnable on October 5th. Mr. Frankel  
18 had raised in his objection a number of cogent comments about  
19 the need to provide some additional information in the  
20 disclosure statement and we need to fix the plan so that it  
21 runs properly. We need to get the bar dates done. And my idea  
22 was that having now spoken to them and gotten the information  
23 that they're willing to at least take a look at what we come up  
24 with, my idea was if we adjourn everything that's on today to  
25 October 5th, we'll come back on October 5th and we'll have all

1 our ducks in a row and we can approve the disclosure statement  
2 and Mr. Curtin's objections will hopefully have been resolved  
3 or they won't be resolved and we'll have to deal with  
4 everything at that point with a motion to dismiss each of the  
5 cases on the table.

6 THE COURT: I guess you won't have a bar --

7 MR. DONOVAN: We'll have a bar date by then.

8 THE COURT: -- bar date yet, but what I will say is  
9 that if you're going to proceed in this fashion I'd like you to  
10 come in with a bid procedures order and put this on for sale.  
11 I think you should be -- assuming that you're going to sell it  
12 before the end of -- before the middle of November, you know.  
13 So this case needs to be brought to a conclusion one way or  
14 another.

15 MR. DONOVAN: Well again, Your Honor, my hope was we  
16 could approve the disclosure statements on October 5th and that  
17 would allow us to confirm and have sales by the middle of  
18 November. So we should be all right as long as I can get all  
19 these ducks in a row by then.

20 THE COURT: So were you going to have the auction on  
21 the date of the plan confirmation?

22 MR. DONOVAN: No, it would be after confirmation but  
23 the idea would be --

24 THE COURT: The auction would be after confirmation?

25 MR. DONOVAN: Well, I think under Piccadilly it has

1 to be but we can work that out among the attorneys and the US  
2 Trustee. We'll talk and see what makes the most sense.

3 THE COURT: Okay. Well, I guess as long as you had -  
4 - if you had everything teed up and ready in the plan, not just  
5 I confirm a plan that says go sell the property whenever you  
6 feel like it.

7 MR. DONOVAN: No, no, no, Your Honor. I think we'll  
8 be a little more specific than that.

9 THE COURT: Yes. Right. Okay.

10 MR. DONOVAN: Now, there is one thing I wanted to  
11 bring to the Court's attention. The receiver is in place in  
12 both cases, New York Spot and Shaker. The receiver agreement  
13 we had with Shaker was that his retention would continue to  
14 today by stipulation. We've agreed that we're going to submit  
15 an order continuing that through October 5th to that hearing.  
16 The receiver in Shaker has given us late last night the  
17 information we need to file operating reports. I have not  
18 gotten that from the receiver in New York Spot. Mr. Frankel  
19 and I have talked and he's going to help me work with the  
20 receiver to get the information so we can bring all the  
21 operating reports current. Our operating is zero but obviously  
22 numbers have to be given to the Court and Mr. Frankel is going  
23 to work with us to get that information.

24 THE COURT: Okay.

25 MR. DONOVAN: Now Your Honor, on New York Double --

1                   THE COURT: Well, maybe we should turn to the one --  
2 the Shaker Heights.

3                   MR. DONOVAN: Shaker Gardens?

4                   THE COURT: Shaker Gardens case since it's --

5                   MR. CURTIN: Your Honor, can I just make one more  
6 comment before we leave New York Spot? I just want to be clear  
7 that we're not -- we raised some technical issues as well as  
8 some substantive issues in the motion and nothing I've heard  
9 today really has changed my mind that this is a proper use of  
10 Chapter 11. My mind may change at some point but we at this  
11 point intend to go forward with the motion even if the  
12 operating reports are filed and the fees are paid and the tax  
13 returns are provided as was pointed out in the motion. So I  
14 just want everyone to be clear that we're intending to go  
15 forward on the motion to dismiss unless something changes.

16                   MR. DONOVAN: That was clear, Your Honor.

17                   THE COURT: Okay. Well, shall we talk about Shaker  
18 Gardens which is the other case? Do you have sales in each of  
19 these cases?

20                   MR. DONOVAN: Yes. It's essentially the same plan  
21 and the same concept.

22                   THE CLERK: Shaker Gardens [inaudible].

23                   MR. DONOVAN: And as I said, we've agreed and will  
24 submit within the next day or two a stipulation that continues  
25 the receiver in place through October 5th.

1                   THE COURT: And you're going to be amending that plan  
2 as well; are you not?

3                   MR. DONOVAN: Exactly, exactly.

4                   MR. DELL'AMORE: I would like to clarify for the  
5 record a deal may have been reached in the other case, a deal  
6 has not been reached in Shaker Gardens. And unless there's  
7 substantial changes to the plan, it's not going to be reached.

8                   MR. DONOVAN: All right --

9                   MR. DELL'AMORE: Aside from the credit bid issue,  
10 which is an issue in our case as well, I understand now they're  
11 not trying to limit the credit bid. That was one issue.

12                  Another issue that we had is that it assumed, because  
13 we didn't see any other reason for the filing, we assumed that  
14 they were trying to avoid personal liability in that case as  
15 well. Again, something is being said differently today, but  
16 moreover in Shaker the plan is seeking to have Carver pay the  
17 administrative expenses for priority claims which for the  
18 record are \$6 million, a claim filed by the IRS. Granted, that  
19 may change but as of right now there's a \$6.8 million --

20                  THE COURT: These are the debtor's -- these are not  
21 claims that are liens?

22                  MR. DELL'AMORE: Correct.

23                  THE COURT: These are --

24                  MR. DELL'AMORE: They're the attorney fees, they're  
25 the priority claims, and they're the quarterly fees that

1 they're looking to have paid.

2 MR. DONOVAN: And Your Honor, I understand what he's  
3 saying and --

4 THE COURT: That's not going to happen, Mr. Donovan.

5 MR. DONOVAN: Your Honor --

6 THE COURT: Unless you get --

7 MR. CURTIN: Your Honor, this whole plan is based on  
8 that premise, Your Honor, about this confirmation fund so --

9 THE COURT: The plan didn't make a lot of sense to me  
10 but it's -- again, this debt structure is similar; is it not?  
11 You have a secured claim which exceeds the value of the  
12 property we think and you have the same second lien; correct?

13 MR. DONOVAN: I believe so, Your Honor.

14 THE COURT: And these other unsecured creditors that  
15 are also business debts that were extended to Mr. Nelkenbaum;  
16 correct?

17 MR. DONOVAN: Yes.

18 MR. CURTIN: Your Honor, the difference here though  
19 is that we have a \$5 million at least, well \$5.5 million  
20 priority claim to the IRS. That may go down but I doubt it's  
21 going to go away completely.

22 THE COURT: Priority claim --

23 MR. CURTIN: Of the IRS.

24 MR. DONOVAN: Your Honor, it's completely estimated  
25 because the debtor never filed any tax returns.

1                   THE COURT: But not --

2                   MR. DONOVAN: It's a number that the IRS kicked out  
3 of the hat.

4                   THE COURT: It's an unsecured priority claim.

5                   MR. DONOVAN: It's an unsecured priority claim and if  
6 the number --

7                   THE COURT: Do they go against Mr. Nelkenbaum for  
8 this? Is this --

9                   MR. DONOVAN: Yes, Your Honor. I believe these are  
10 also Chapter S companies. Mr. Nelkenbaum will have to deal  
11 with that and that's why he's working on the tax returns. And  
12 what I'm looking for and what I -- perhaps I simply said it too  
13 forcefully but what I'm looking for is the opportunity to  
14 rewrite the papers so that it lays all of this out as we've  
15 discussed it today and they'll have the opportunity to come in  
16 on the 5th and either say now that we see all the numbers and  
17 we see where we are, we're ready to go forward or they'll say  
18 and Your Honor will have to make a decision.

19                   THE COURT: So what you're saying is that the only  
20 purpose of doing this is to take advantage of the opportunity  
21 to market the property yourself which you would have in a  
22 Chapter 11 case and would not have in the context of a  
23 foreclosure action.

24                   MR. DONOVAN: That's the primary benefit, Your Honor.

25                   THE COURT: Is there any other benefit?

1                   MR. DONOVAN: There's a transfer tax benefit.  
2 There's the opportunity for the debtor to challenge the amount  
3 that is sought in these claims which would not otherwise be  
4 available outside of this court. I believe it's safer to have  
5 a judgment but I don't believe that a judgment in New York Spot  
6 --

7                   THE COURT: Well, if they have a judgment --

8                   MR. DONOVAN: But there are issues here, Your Honor,  
9 that we think are worth pursuing at least through October 5th  
10 and when we come back with all of our ducks in a row we'll see  
11 where we are.

12                  THE COURT: All right. Well, there's no motion to  
13 dismiss on right now anyway so I guess that I'll adjourn this  
14 to the 5th.

15                  MR. DONOVAN: And I assume Mr. Curtin's comments from  
16 the other case apply to this one as well.

17                  MR. DELL'AMORE: I'd just like to add that on the 5th  
18 we're going to support Mr. Curtin's motion and we're probably  
19 going to be filing our own motion as well and make it  
20 returnable that day. I've already received permission to make  
21 a motion on that day.

22                  THE COURT: Let me ask you what's your client's  
23 objection to the debtor selling the property in the context of  
24 a Chapter 11 case assuming you got the credit bid?

25                  MR. DELL'AMORE: Well --

1                   THE COURT: Why would you prefer to go through the  
2 foreclosure route?

3                   MR. DELL'AMORE: There's multiple reasons. First of  
4 all, coming in today we thought that our credit bid was limited  
5 and we thought that the personal liability of the guarantor  
6 would be extinguished.

7                   THE COURT: Well, I completely understand that.

8                   MR. DELL'AMORE: But that's not the case.

9                   THE COURT: Assuming that's not the case?

10                  MR. DELL'AMORE: Then the objection is that we have  
11 to pay their attorneys and we have to pay their priority claims  
12 and we have to pay their quarterly fees.

13                  THE COURT: Well why on earth would you ever do that?

14                  MR. DELL'AMORE: I agree. That's why --

15                  MR. DONOVAN: And Your Honor, why on earth they would  
16 do it is because it might turn out that it's substantially  
17 cheaper than it is going forward.

18                  THE COURT: Cheaper for them?

19                  MR. DONOVAN: Cheaper for them than going forward  
20 outside of this Court trying to sell the property. Maybe it  
21 isn't and we'll have discussion, we'll work out what we can.  
22 It may be --

23                  THE COURT: Well, if a disclosure judgment --

24                  MR. DONOVAN: -- that Mr. Nelkenbaum is willing to  
25 pay those payments that he has to to confirm the plan because

1 he thinks he can get more money at a sale. We'll have to have  
2 that discussion.

3 MR. DELL'AMORE: We're on the eve of foreclosure.  
4 That's why this case was filed so we're right there.

5 THE COURT: Okay. 10/6.

6 MR. DELL'AMORE: Can I have just one more  
7 administrative minute? I do have a motion on to keep the  
8 receiver in place. I'm not sure if [unintelligible]. I know  
9 he referenced it. I just want to make clear that's being  
10 adjourned.

11 THE COURT: And you're stipulating to that?

12 MR. DONOVAN: Right. And carrying that motion to  
13 October 5th and in the interim keeping the receiver in place.

14 THE COURT: Okay. Let's see, is that stipulation on  
15 file here?

16 MR. DONOVAN: Yes.

17 MR. DELL'AMORE: It's on the docket, yeah.

18 THE COURT: Okay. I guess that stipulation is not on  
19 the docket for today, on the calendar today.

20 MR. DELL'AMORE: It is on the docket.

21 THE COURT: Oh yes, here it is. Okay. So I'll  
22 adjourn this to 10/5 and I'll note the receiver is authorized  
23 to remain in place pending the hearing on this motion.

24 MR. DELL'AMORE: Thank you.

25 THE COURT: Okay. So let's go on to -- is New York -

1 - what would be the next one?

2 MR. DONOVAN: New York Double.

3 THE COURT: New York Double?

4 MR. DONOVAN: Your Honor, this is one where we have  
5 made a deal with the lender. We have a stipulation that has  
6 been drafted that will have the receiver taken out and he's  
7 going to turn over the funds that he's holding to the debtor  
8 and then once that's done, and I expect to have that in the  
9 next couple of days, it is our intention to dismiss the case.  
10 Mr. Curtin has made a motion to dismiss on October 5th. So  
11 what we'd like to do is come back on October 5th by which time  
12 we'll be ready to accede to that suggestion of dismissal.

13 THE COURT: All right. That's fine.

14 MR. DONOVAN: And in the meantime we should have a  
15 stipulation submitted to chambers within the next few days.

16 THE COURT: So now let's talk about Martense.

17 MR. ROSENBLoom: Good afternoon, Your Honor.

18 THE COURT: Good afternoon.

19 MR. ROSENBLoom: In Martense, Your Honor, there have  
20 been some very favorable turns of events since we were last  
21 here. First, the New York Community Bank Mortgage has been  
22 purchased by a third party who has expressed a willingness to  
23 work with us to facilitate sale of the property. Along with  
24 that, Judge, we are finalizing a contract of sale to sell the  
25 property to Mr. Weston's client subject to higher and better

1 bids. And one --

2 THE COURT: And what's the sales price?

3 MR. ROSENBLoom: \$6,400,000.00.

4 THE COURT: And what's the amount of the claim? I  
5 guess we're calling it the secured claim.

6 MR. WESTON: Approximately 4.8.

7 MR. ROSENBLoom: No, it's approximately, with  
8 interest and charges, it's approximately 5.3.

9 THE COURT: And other creditors on the case.

10 MR. ROSENBLoom: There are other secured creditors.

11 There are unsecured creditors and the plan is of course going  
12 to provide the sale is subject to higher and better bids and we  
13 will be presenting to Your Honor bidding procedures coupled  
14 with an order scheduling a hearing to consider the sale subject  
15 to higher and better bids and subject to a breakup fee and  
16 fairly detailed bid procedures typical of what the Court  
17 approves.

18 We'll be coupling that with a liquidated plan and we  
19 would intend to have an auction and to run the auction  
20 coincident with confirmation of the case.

21 THE COURT: And how is this going to -- you've got a  
22 \$6 million sales price, at least that's --

23 MR. WESTON: 6.4.

24 MR. ROSENBLoom: 6.4.

25 THE COURT: \$6.4 million. Okay. 6.4, 5.8 of the

1 secured claim. The second lien is how much?

2 MR. ROSENBLoom: The second lien is 300.

3 THE COURT: Is 300. So what would you have to pay at  
4 confirmation to achieve confirmation? You have to pay  
5 administrative expenses?

6 MR. ROSENBLoom: Right. The debtor has funds  
7 available which will be used to pay administrative expenses.

8 THE COURT: How do they have funds available in  
9 excess of the mortgage payment that you've been making?

10 MR. ROSENBLoom: Right. Yes.

11 THE COURT: Have you been continuing to make the post  
12 petition payments?

13 MR. ROSENBLoom: The mortgagee has allowed us not to  
14 make those payments; however, we have made the tax payment  
15 which fell due in July. And the mortgagee has also indicated a  
16 willingness to carve out money from its mortgage so that there  
17 is a fund available for unsecured creditors and has also  
18 expressed a willingness to make monies available to the extent  
19 as it might be needed to facilitate confirmation. We have a  
20 whole different tenet of the case.

21 THE COURT: Okay. So just thinking through whether  
22 you, you know, what you have to do to achieve confirmation, you  
23 have to have enough to pay the secured claims except to the  
24 extent that they degree to take less, and you have to have  
25 enough to pay the administrative claims.

1                   MR. ROSENBLoom: Right. And we'll have the funds  
2 available, we will have a fund available for unsecured  
3 creditors as well.

4                   THE COURT: And how much is the second lienholder  
5 that applies on all of these properties?

6                   MR. ROSENBLoom: \$300,000.00.

7                   THE COURT: You might be able to, you might not. So  
8 you're filing an amended plan and disclosure statement?

9                   MR. ROSENBLoom: Yes, ma'am.

10                  THE COURT: And when will that be done?

11                  MR. ROSENBLoom: That will be done almost coincident  
12 with our finalizing our contract of sale.

13                  MR. WESTON: I would expect the contract of sale to  
14 be finalized within the next day or two. There is some  
15 language issues. There's one substantive issue which is not a  
16 deal killer, so I would expect that to be done.

17                  THE COURT: What are you looking for by way of a  
18 breakup fee?

19                  MR. WESTON: \$175,000.00 which is less than 3%.

20                  MR. ROSENBLoom: We're contemplating minimum bids,  
21 additional bids of \$50,000.00.

22                  THE COURT: Did you have anything you wanted to --

23                  MR. CURTIN: I did, Your Honor. The only thing I  
24 wanted to add is -- well first of all, we have a motion to  
25 dismiss in this case that's on on the 5th also. What I haven't

1 heard mentioned in this case is the fact that the tax returns  
2 also haven't been filed in this case. Right now as it stands  
3 we have priority claims of almost a quarter million and if the  
4 property is going to be sold it doesn't seem like a situation  
5 where it's going to be able to be paid over time. So I don't  
6 know what the intent is on that. I don't know whether they're  
7 assuming that that's going to come down to zero or come down to  
8 a more manageable number but as it stands right now, that's  
9 what's filed and those are I believe all tax claims.

10 MR. ROSENBLoom: If I can respond to that, Judge,  
11 they are priority tax claims, they're all estimated. And our  
12 understanding is that the amount that is owed is truly minimal.  
13 I expect that I will have those tax returns prepared and filed  
14 by the end of the month.

15 THE COURT: Okay. So if I put this over to 10/5 will  
16 you at that point -- what I would like is for you to file your  
17 amended plan and disclosure statement by then. You're going to  
18 bring in a bid procedures order --

19 MR. ROSENBLoom: By then.

20 THE COURT: -- in advance of that?

21 MR. ROSENBLoom: No. We'll be submitting it along  
22 with the plan. We expect to have it all done just about the  
23 same time.

24 MR. WESTON: But sooner than October 5th. I would  
25 like to see the bid procedures and the breakup fee order as

1 soon as possible.

2 THE COURT: That's going to have to be done on  
3 notice. Yes.

4 MR. ROSENBLoom: Correct.

5 MR. CURTIN: Your Honor, one way that we've done it  
6 in the past is that the bid procedures will be in the context  
7 of the disclosure statement because we need entirely new  
8 documents. The old documents are meaningless at this point so  
9 the bid procedures could be incorporated in the disclosure  
10 statement we can raise any objections and do it that way. In  
11 other words, the bid procedures can be an exhibit to the  
12 disclosure statement.

13 THE COURT: Well, I suppose the disclosure statement  
14 is going to have to disclose what the bid procedures are but I  
15 think you want them approved before the disclosure statement is  
16 approved; don't you? You don't want to wait till confirmation.

17 MR. ROSENBLoom: Correct.

18 MR. CURTIN: Correct.

19 THE COURT: So why don't you bring on a motion for  
20 approval of the bid procedures for October 5th. Is that all  
21 right?

22 MR. WESTON: That's fine. If we can do it sooner,  
23 we'll do that too.

24 THE COURT: All right.

25 MR. ROSENBLoom: Okay. We're close. We're fine.

1 We'll do what we can to get it done, Judge.

2 THE COURT: Okay. Anything else?

3 MR. ROSENBLoom: No, ma'am.

4 MR. WESTON: Judge, thank you very much.

5 THE COURT: Okay.

6 MR. CURTIN: Thank you, Your Honor.

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1 I certify that the foregoing is a court transcript from an  
2 electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Mary Greco

7 Dated: September 22, 2011

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